



STATE OF INDIANA

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March 26, 2015

John C. Weist
23 E. Main St.
P.O. Box 41
Markleville, IN 46056

Re: Formal Complaint 15-FC-59; Alleged Violation of the Open Door Law by the Markleville Town Council

Dear Mr. Weist,

This advisory opinion is in response to your formal complaint alleging the Markleville Town Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Council has responded via Ms. Karen Arland, Esq., counsel. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 17, 2015.

BACKGROUND

Your complaint dated February 13, 2015 alleges several violations of the Open Door Law by the Markleville Town Council. The complaint alleges a failure to provide notice of an executive session dated December 17, 2014 in violation of Ind. Code § 5-14-1.5-6.1.

On February 9, 2015, the Council met in a public meeting. Your complaint also alleges the Council prevented some members of the public from attending the meeting by posting notice limiting maximum capacity of the town hall. You assert this was the second time such a notice was posted, noting December 29, 2014 was the first. You allege members of the public were denied entrance to the meeting and the Council had refused to move to larger accommodations.

In her response, the Council raises several concerns. Initially, under date of denial, you wrote February 29, 2015, which counsel acknowledges appears to be a typographical error. Second, the Council notes the complainant checked the box for executive session, even though no executive session occurred on February 9, 2015. The Council also notes

that on February 19, 2015, the Division of Fire Safety and Building Code Enforcement determined 49 persons to be an appropriate limitation.

With regards to the December 29, 2014 meeting, counsel states the statute of limitations has run. This is correct; this particular meeting was included in *Advisory Opinion 15-FC-19*, in which this Office has already issued an Advisory Opinion.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

The Council is correct that while your complaint listed an executive session violation, your complaint fails to allege any executive session violations. Your complaint alleges denial of admission to a regular meeting, not an executive meeting. Therefore, the notation for executive session violation will be disregarded. In the future, I urge you to be more careful with the filing of your complaint and ask you limit it to what is alleged within.

As for the Council's assertion your formal complaint is deficient, the Public Access Counselor has the discretion to accept a complaint in any form. See Ind. Code § 5-14-5-11. I deem your submission valid for the purposes of issuing an Advisory Opinion. Furthermore, as a member of the public alleging an Open Door Law violation within thirty days of the perceived violation, you have standing to file a formal complaint under Ind. Code § 5-14-5-7. Contrary to the Council's arguments, I do not often dismiss complaints on procedural technicalities given the very purpose of the Indiana access laws.

As for the size of the meeting location, the Office has already issued several opinions to that effect, including *Advisory Opinion 15-FC-19*. In that opinion, while I found the Markleville Town Council did not violate the ODL, I did conclude the Council did not act within the spirit of the ODL.

It appears my advice was not heeded. Similarly, the tone of the Council's response does not seem to give deference to the intent of the Open Door Law: this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of the Open Door Law the official action of public agencies be conducted and taken openly in order that the people may be fully informed.

There will undoubtedly be instances when an audience exceeds capacity. If there is a reasonable expectation in which interested members of the public will be excluded from the meeting place, accommodations should be made. This could include a public address

system set up in an overflow area; some kind of public access broadcast; or moving the location of the meeting to a bigger space. These are practical solutions which should not place an unreasonable burden on a governing body.

My recommendations are simple: if the size of an anticipated audience is bigger than capacity, a public agency should make reasonable efforts to ensure access. Given this is the second time in less than two months the Town of Markleville has experienced this problem, perhaps it is time to rethink logistics. I implore the Council to be mindful of its responsibility as a governing body to be accessible and transparent, even in the face of inconvenience and potential public dissent.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Karen Arland, Esq.